

Remarks

The final office action mailed November 3, 2006 has been carefully reviewed and these remarks are responsive thereto. Claims 45, 48-61 and 64-66 are pending and stand rejected. Claims 45, 48-53, 60, 61, and 64-66 are amended herein. No new matter is introduced.

The office action rejected claim 45 under 35 U.S.C. § 102(e) based on U.S. Patent 6,317,784 (Mackintosh et al., hereinafter "Mackintosh"). Claim 45 recites

- (b) receiving a telephone message at a first location, wherein
 - the telephone message includes a portion of the musical piece, does not identify the musical piece and designates a location other than the first location, and
 - the telephone message is initiated at the location of a first radio receiver receiving the radio broadcast and after the portion of the musical piece is played in the radio broadcast...

The office action argues at page 3 that Mackintosh col. 24, line 65 through col. 25, line 4 teaches receiving a telephone message at a first location. That portion of Mackintosh describes a computer having a "channel 728" (which can be a phone line, a cellular phone link, etc.), but does not describe telephone messages that might be received. The office action then argues that Mackintosh col. 10, lines 30-41 teaches a telephone message including a portion of a musical piece and designating a location other than the first location. This part of Mackintosh is reproduced below.

30 In a step **230**, data server **214** uses the program data to
retrieve information pertaining to supplemental materials.
As described above, the supplemental materials can include,
for example, images, videos, audios, text, or other data. In
one embodiment, the information or parameters retrieved by
35 data server **214** can include, for example, a URL or other
location information to identify where the one or more
various supplemental materials may be located on additional
supplemental servers **216**. Data server **214** returns the infor-
mation pertaining to the supplemental materials to user
40 terminal **212**. This return path can also be implemented by
the Internet **210** or other communication path.

Notably, the above passage describes action taken by a "data server 214" in Mackintosh Fig. 5:

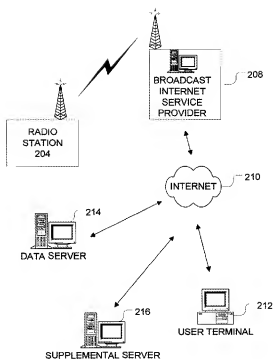


Fig. 5

To the extent the office action is treating data server 214 as a first location, and even assuming that data server 214 is a computer having the features described at Mackintosh col. 24, line 65 through col. 25, line 4, nothing at Mackintosh col. 10, lines 30-41 describes or suggests that data server 214 receives a telephone message that "includes a portion of the musical piece [and] does not identify the musical piece." Although data server 214 uses "program data" sent to data server 214 by "user terminal 212," Mackintosh does not teach that this "program data" includes a portion of (*and* lacks identification for) a musical piece. Instead, and as set forth at Mackintosh col. 10, lines 5-17:

- 5 In a step 228, user terminal 212 retrieves the program data from the downloaded broadcast materials and provides this program data to data server 214. Again, this program data can include data pertaining to a specific portion of the broadcast material currently being broadcast. In one
10 embodiment as discussed above, this program data can include a cut number, a cut category, and a duration. Additionally, this can include a station ID such that cut number or other codes from different stations can be differentiated. As stated above, the station ID can be generated
15 originally from radio station 204 and provided to broadcast Internet service provider 208 and thus included in the downlink to user terminal 212 via the Internet 210.

(underlining added) See also col. 9, lines 8-18 and col. 10, lines 28-29.

If the office action is treating data server 214 as the first location and relying on the information retrieved by data server 214 regarding supplemental materials (col. 10, lines 30-41), or if the office action is relying on information returned by data server 214 to user terminal 212 (which would then require treating user terminal 212 as the first location), then the second requirement of step (b) is not satisfied. Specifically, information retrieved by data server 214 or sent to data server 212 would not be in a telephone message "initiated at the location of a first radio receiver receiving the radio broadcast and after the portion of the musical piece is played in the radio broadcast..." "

Claims 49-52 depend from claim 45 and are allowable for at least the same reasons as claim 45. Claim 48, which also depends from claim 45, stands rejected under 35 U.S.C. § 103 based on Mackintosh in view of U.S. Patent 5,991,737 (Chen). Even if there would have been motivation to combine Mackintosh and Chen, the combination does not teach all features of claim 45. Accordingly, claim 48 is also allowable.

Claim 53 also stands rejected under 35 U.S.C. § 102(e) based on Mackintosh and recites

a music identification unit configured to locate data in said data base identifying a musical piece in response to receipt via a first telephone of a message initiated at a location of a first radio receiver playing the musical piece in a radio broadcast by a radio station, *the received message including a portion of the musical piece and not identifying the musical piece, the received message being initiated after the portion of the musical piece has been played in the radio broadcast*, the received message further designating a location different than the location of the first telephone... [emphasis added]

For reasons similar to those set forth above, claim 53 and its dependent claims 54 and 56-59 are also allowable. Claim 55, which also depends from claim 53, stands rejected under 35 U.S.C. § 103 based on Mackintosh in view of Chen. Even if there would have been motivation to combine Mackintosh and Chen, the combination does not teach all features of claim 55. Accordingly, claim 55 is also allowable.

Claim 60 also stands rejected under 35 U.S.C. § 102(e) based on Mackintosh and recites

(b) sending a first message from a location of the first receiver to a centralized information identification location having a data base storing data for identifying pieces of information, wherein the first message includes a portion of the broadcast piece of information received and stored with the first receiver, wherein the first message does not identify the broadcast piece of information, and wherein the first message further identifies a location other than the centralized information identification location...

For reasons similar to those set forth above in connection with claim 45, claim 60 is also allowable.

Claim 61 also stands rejected under 35 U.S.C. § 102(e) based on Mackintosh and recites

first message transmitting means for transmitting a message including a portion of the stored and received broadcast piece of information but not identifying the broadcast piece of information; and

a centralized information identification location, including:

means for receiving a message from the first message transmitting means;

a data base storing data for identifying pieces of information broadcast by a plurality of broadcasting stations; and

an information identification unit configured, in response to a received message, to locate data in said data base identifying the broadcast piece of information and to transmit a message including said identification to a designated location, wherein

the received message includes a portion of the broadcast piece of information and is initiated after the receiver has received the portion of the broadcast piece of information, and

the received message designates the designated location. [emphasis added]

For reasons similar to those set forth above in connection with claim 45, claim 61 is also allowable.

Claim 64 also stands rejected under 35 U.S.C. § 102(e) based on Mackintosh and recites

a centralized information identification location, including means for receiving the first message, ... wherein

the first message does not identify the broadcast piece of information, and

the first message designates the designated location. [emphasis added]

For reasons similar to those set forth above in connection with claim 45, claim 64 and its dependent claim 65 are also allowable.

Claim 66 also stands rejected under 35 U.S.C. § 102(e) based on Mackintosh and recites

(a) receiving a telephone message that includes a portion of a musical piece and that is initiated at a location of a radio receiver with which a person is listening to a radio station playing the musical piece, wherein said telephone message is initiated after the portion of the musical piece is played by the radio station, and wherein the telephone message does not identify the musical piece...

For many of the reasons similar to those set forth above in connection with claim 45, claim 66 is also allowable.

It is respectfully submitted that this application is in condition for allowance.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: April 3, 2007

By: **/H. Wayne Porter/**

H. Wayne Porter
Reg. No. 42,084

1100 13th Street, N.W., Suite 1200
Washington, D.C. 20005-4051
Tel: (202) 824-3000
Fax: (202) 824-3001